

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

| | |
|-------------------------------------|----------------------------|
| Antwan Jermaine Graham, #11469-021, |) C/A No. 9:07-932-JFA-GCK |
| |) |
| Petitioner, |) ORDER |
| v. |) |
| |) |
| Mildred L. Rivera, Warden, |) |
| FCI-Estill, |) |
| |) |
| Respondent. |) |
| |) |

The *pro se* petitioner, Antwan Graham, initiated this action pursuant to 28 U.S.C. § 2241. He alleges that the Bureau of Prisons (“BOP”) erroneously computed his federal sentence. Specifically, the petitioner contends that when the United States Marshal borrowed him from state authorities for an appearance in federal court that his status was converted to official federal detention. As a result, the petitioner requests that the BOP credit his federal sentence from the day he was taken into temporary custody or the day he was sentenced in federal court.

The Magistrate Judge assigned to this action¹ has prepared a comprehensive Report and Recommendation wherein he suggests that the respondent’s motion to dismiss and/or for summary judgment² be granted and the action be dismissed. The Report sets forth in detail

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. The petitioner responded to the motion.

the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and Recommendation, however, he has not filed objections³ to the Report.

In its motion for summary judgment, the respondent contends that Mr. Graham is not entitled to any prior custody credit because all of the time he spent in custody since his arrest by state authorities was credited toward service of his state probation violation, including the time he was improperly confined at a BOP facility.

After carefully reviewing the applicable law, the record in this case, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The court, therefore, adopts the recommendation of the Magistrate Judge in full and incorporates this Report by specific reference.

Accordingly, the respondent's motion for summary judgment is granted and this action is dismissed.

IT IS SO ORDERED.

Joseph F. Anderson, Jr.
United States District Judge

November 8, 2007
Columbia, South Carolina

³ Under 28 U.S.C. § 636(b)(1), the district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's Report to which objections have been filed. The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to the Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).